

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARCIAGARBUTT and	:	
JAMIE R. LAUGHLIN, H/W	:	
Plaintiffs,	:	CIVIL ACTION — LAW
vs.	:	
WAL-MART STORES, INC. d/b/a	:	
WAL-MART,	:	NO.:
Defendant.	:	JURY TRIAL DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

Defendant, Wal-Mart Stores, Inc. d/b/a Wal-Mart, more correctly identified as Wal-Mart Stores East, L.P. (hereinafter referred to as "Wal-Mart"), is represented by undersigned counsel in this matter. Defendant files this Notice of Removal pursuant to 28 U.S.C. § 1441(a) and (b) to remove this action from the Court of Common Pleas of Delaware County, No. 11-6187, where it is now pending, to the United States District Court for the Eastern District of Pennsylvania.

Defendant, in support thereof, states as follows:

1. A Civil Action has been brought against Wal-Mart by Plaintiffs and is pending in the Court of Common Pleas Delaware County, No. 11-6187.
2. Wal-Mart was served with a copy of Plaintiffs' Complaint on August 22, 2011. This Notice of Removal is filed within thirty (30) days thereof. A copy of Plaintiffs' Complaint is attached hereto and marked as Exhibit "A."
3. The State Court wherein this action was originally filed is located in Media, Pennsylvania, which is embraced within this jurisdictional district.
4. Removal from the Delaware County Court of Common Pleas is proper under 28 U.S.C. §1441(a) and (b), which authorizes the removal of any civil action of which the District

Courts of the United States has original jurisdiction and if none of the parties in interest properly joined and served as a defendant is a citizen of the state in which such action is brought.

5. This Court has original jurisdiction over the subject matter under 28 U.S.C. §1332 as the parties are citizens of different states, and the matter in controversy exceeds \$75,000 as set forth below.

6. Plaintiffs allege that they are citizens of the Commonwealth of Pennsylvania and reside at 1360 Edge Hill Road, Darby, Pennsylvania. *See Exhibit "A," case caption and ¶ 1.*

7. Wal-Mart Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware with principal business offices located in Bentonville, Arkansas.

8. Plaintiffs' Complaint contains allegations of negligence arising out of an incident that occurred on or about August 15, 2009 at Wal-Mart Store #5495, which is located in Glenolden, Pennsylvania. *See Exhibit "A," ¶ 5.*

9. Plaintiff Marcia Garbutt alleges she slipped and fell on a liquid substance on the tiled floor near the jewelry counter. *See Exhibit "A," ¶ 5.*

10. Plaintiff Marcia Garbutt alleges that she sustained "serious and permanent personal injuries requiring the care and treatment of physicians and medication and has been and will in the future continue to be hampered in her daily routine." *See Exhibit "A," ¶ 7.*

11. Specifically, Plaintiff Marcia Garbutt alleges that she sustained a "fractured brachial head right upper extremity; right elbow and wrist strain and sprain; tendonitis right wrist; carpal tunnel syndrome right hand; dequervain's tenosynovitis of right hand; [and] 3rd finger right hand sprain." *See Exhibit "A," ¶ 15.*

12. Plaintiff Marcia Garbutt alleges that she has incurred medical expenses in the past and may continue to incur expenses in the future. *See Exhibit "A," ¶ 16.*

13. Plaintiff Marcia Garbutt alleges that she has “in the past suffered and will in the future continue to suffer great physical and emotional pain and suffering.” *See Exhibit “A,” ¶ 17.*

14. Plaintiff Marcia Garbutt alleges that she “has in the past and will in the future suffer from the inability to live a normal life and enjoy life’s pleasures, including but not limited to, an inability to attend to usual daily duties and activities.” *See Exhibit “A,” ¶ 18.*

15. Plaintiffs seek damages in excess of \$50,000. *See Exhibit “A,” ad damnum clauses.*

16. On August 26, 2011, counsel for Wal-Mart sent a letter to Plaintiffs’ counsel inquiring whether Plaintiffs would stipulate that their damages were less than \$75,000 to avoid removal to federal court.

17. Counsel for Wal-Mart requested a response by September 2, 2011.

18. Plaintiffs’ counsel did not return the signed stipulation or otherwise respond to the August 26, 2011 correspondence.

19. In light of the severity of Plaintiffs’ allegations, Plaintiffs’ claim of damages over \$50,000, and Plaintiffs’ counsel’s unwillingness to stipulate to damages under \$75,000, Wal-Mart believes that the matter in controversy is in excess of the sum or the value of \$75,000 exclusive of interest and costs.

20. Based on the foregoing, the requirements of 28 U.S.C. §1441(a) and (b) and 1332 have been satisfied and the within matter is properly removable.

WHEREFORE, Defendant, Wal-Mart Stores, Inc. d/b/a Wal-Mart, respectfully requests that the State Action be removed from the Court of Common Pleas of Delaware County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

MCDONNELL & ASSOCIATES, P.C.

Dated: September 14, 2011 By:

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CERTIFICATE OF SERVICE

I, Analisa Sondergaard, Esquire hereby certify that a true and correct copy Defendant's Notice of Removal was served via facsimile on this date to the counsel below named:

Regina M. Vogelsong, Esquire
Lowenthal & Abrams, PC
555 City Line Avenue, Suite 500
Bala Cynwyd, PA 19004
Facsimile: 610-667-3440

McDONNELL & ASSOCIATES, P.C.

Dated: September 14, 2011

By:

Analisa Sondergaard
Analisa Sondergaard, Esquire
Attorneys for Defendant